



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA U.S. MAIL

DEC 17 2007

Jill Holtzman Vogel, Esq.
Holtzman Vogel PLLC
98 Alexandria Pike, Suite 53
Warrenton, VA 20186

RE: MUR 5850
Republican National Committee and
Timothy J. Morgan, in his official capacity
as Treasurer

Dear Jill:

On October 27, 2006, your client, the Republican National Committee and Timothy J. Morgan, in his official capacity as Treasurer ("RNC"), was notified that the Federal Election Commission found reason to believe that it violated 2 U.S.C. §§ 434(b)(4)(H)(iii) and 434(g)(1)(A). On January 12, January 28, March 22, April 23, and May 3, 2007, the RNC submitted responses to the Commission's reason to believe findings. After considering the circumstances of the matter, the Commission determined on December 11, 2007, to take no further action as to the RNC and closed the file in this matter. The Factual and Legal Analysis, which explains the Commission's decision, is enclosed for your information.

The Commission nevertheless admonishes the RNC that it violated 11 C.F.R. § 104.14(b) by failing to maintain records to verify the dates of certain independent expenditures and 11 C.F.R. 104.4(c) by failing to file two 24-Hour Notices. Your client should take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1582.

Sincerely,

A handwritten signature in black ink, appearing to be "J. McConnell", written over a horizontal line.

Julie K. McConnell
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Republican National Committee and Timothy J. Morgan, **MUR:** 5850
in his official capacity as Treasurer¹

I. INTRODUCTION

This matter originated as a referral from the Reports Analysis Division ("RAD"). Based on the failure of the Republican National Committee and Timothy J. Morgan, in his official capacity as Treasurer ("RNC"), to reconcile a discrepancy of \$3,498,619.82 between the independent expenditures disclosed in its 24-Hour Notices and those reported on Schedule E of its 2004 Post-General Report, the Commission found reason to believe the RNC

- Violated 2 U.S.C. § 434(g)(1)(A) and 11 C.F.R. § 104.4(c) by failing to file three 24-Hour Notices relating to five independent expenditures totaling \$1,915,667.57; and
- Violated 2 U.S.C. § 434(b)(4)(H)(iii) and 11 C.F.R. § 104.4(a) by failing to report independent expenditures totaling \$5,414,287.39 on Schedule E of its 2004 Post-General Report.

In addition, the Commission found reason to believe that the RNC violated 2 U.S.C. § 434(g)(1)(A) and 11 C.F.R. § 104.4(c) by failing to file five 24-Hour Notices relating to eight independent expenditures totaling \$173,030.34.

Throughout this matter, the RNC has asserted that it properly reported its 2004 independent expenditures. In support of this assertion, counsel submitted invoices for the RNC's 2004 independent expenditures and a spreadsheet reconciling its 2004 cycle independent expenditures and reports; explained the compliance procedures in place in 2004 to ensure that the RNC properly reported independent expenditures; consulted the independent expenditure vendor used by the RNC to reconstruct its 2004 independent expenditure reporting; and answered our

¹ Timothy Morgan became treasurer on March 1, 2007. Bob Kjellander was treasurer at the time of the reason to believe findings in this matter, and Michael Retzer was the treasurer in 2004.

1 follow-up questions regarding the amount, purpose, and timing of the media expenses included
2 in the Commission's reason to believe findings. Based on the information provided, the
3 RNC appears to have properly reported all but \$26,302.15 in independent expenditures for the
4 shipping of media content to television and radio stations, which the RNC reported on Schedule
5 E of its 2004 Post-General Report but failed to disclose in 24-Hour Notices.²

6 This matter now involves a relatively small amount in violation, particularly compared to
7 the amount of activity included in the Commission's reason to believe findings, and given the
8 nature of the violation and the *de minimus* civil penalty that would be appropriate under
9 these circumstances, it does not justify the use of additional enforcement resources.

10 Accordingly, the Commission takes no further action other than to admonish the RNC for failing
11 to file two 24-Hour Notices to support independent expenditures totaling \$26,302.15 for shipping
12 of media content to television and radio stations and failing to maintain records to verify the
13 dates of certain independent expenditures.

14 **E. FACTUAL AND LEGAL ANALYSIS**

15 **A. FAILURE TO RECONCILE 24-HOUR NOTICE AND SCHEDULE E**
16 **REPORTING**

17 The Commission found reason to believe that the RNC failed to file three 24-Hour
18 Notices relating to five independent expenditures totaling \$1,915,667.57 and failed to report
19 independent expenditures totaling \$5,414,287.39 on Schedule E of its 2004 Post-General Report,

² The 24-Hour Notice period for the 2004 general election ran from October 14 to October 31, 2004. In 2004, the RNC paid its independent expenditures upon receipt of invoices from its vendors and disseminated the communications several days later. See, e.g., Invoice RNC IE 101304003 (Oct. 15, 2004) (\$5,000,000 invoice from Crossroads Media); RNC Check No. 150174, \$5,000,000 Wire Transfer to Crossroads Media LLC (Oct. 15, 2004); FEC Form 24 (Oct. 20, 2004) (FEC Image 24991289984) (disclosing \$5,000,000 payment to Crossroads Media LLC). Because of the different triggers for Schedule E and 24-Hour Notice reporting (*i.e.*, the date of expenditure versus the date of dissemination), many of the communications reported on Schedule E appeared to fall within the 24-Hour Notice period based on the date of expenditure but were disseminated after October 31, 2004. See *infra* notes 6-7 and accompanying text.

1 resulting in a \$3,498,619.82 discrepancy between the RNC's Schedule E and 24-Hour Notice
2 reporting of payments to two media vendors, Crossroads Media and Arena Communications.
3 The information provided during conciliation, however, suggests that the RNC properly reported
4 payments to these vendors.

5 1. Schedule E Reporting of Independent Expenditures to Crossroads
6 Media and Arena Communications

7 Based on the information available at the reason to believe stage, it appeared that the
8 RNC failed to report payments of \$5,000,000 and \$300,000 to Crossroads Media on October 16
9 and 31, 2004, respectively, on Schedule E of its 2004 Post-General Report, although it disclosed
10 these expenditures in 24-Hour Notices. In addition, the RNC disclosed payments to Arena
11 Communications in its 24-Hour Notices that exceeded the payments reported on Schedule E of
12 its 2004 Post-General Report by \$114,287.39, suggesting that the RNC under-reported its
13 independent expenditures to this vendor on Schedule E.

14 The RNC, however, properly reported these payments on Schedule E of its 2004 Pre- and
15 Post-General Reports:

- 16 • The RNC reported the \$5,000,000 payment to Crossroads Media on Schedule E of its
17 2004 Pre-General Report; it paid this independent expenditure via wire transfer on
18 October 13, 2004, and the 2004 Pre-General Report covered the period from October 1 to
19 13, 2004.³

³ See Invoice RNC IE 101304001 (Oct. 13, 2004); RNC Check No. 150084, \$5,000,000 Wire Transfer to Crossroads Media LLC (Oct. 13, 2004). Because the date of expenditure, rather than the date of dissemination, is the basis for Schedule E reporting, *see supra* note 2, a committee may pay the production and distribution costs associated with an independent expenditure in one reporting period and publicly disseminate it in a later reporting period. If a committee does this, it may disclose the independent expenditure before the communication is publicly disseminated and report the independent expenditure on Schedule E for the reporting period in which the disbursement is made, with no further reporting obligation unless dissemination of the communication triggers the requirement to file 24 or 48 Hour Notices. *See Reporting; Coordinated and Independent Expenditures; Final Rules*, 68 Fed. Reg. 404, 407 (Jan. 3, 2003).

- 1 • It reported the \$300,000 payment to Crossroads Media, which it disclosed in a 24-Hour
2 Notice on October 31, 2004, on Schedule E of its 2004 Post-General Report as part of a
3 \$400,000 independent expenditure dated October 29, 2004.⁴
- 4 • Finally, although the payments to Arena Communications disclosed in 24-Hour Notices
5 initially appeared to exceed the Schedule E reporting by \$114,287.39, the RNC received a
6 postage refund of \$244,624.66 from this vendor during the same period, which it properly
7 reported on Schedule A for Line 15 (Offsets to Operating Expenditures).⁵ Because the
8 refunded amount exceeded the difference between the 24-Hour Notice and Schedule E
9 reporting, it canceled the discrepancy.

10 Thus, based on the information provided by the RNC, it appears no violation occurred.

11 2. Disclosure of Independent Expenditures to Crossroads Media in
12 24-Hour Notices

13 The RNC reported independent expenditures to Crossroads Media on Schedule E of its
14 2004 Post-General Report in the amounts of \$90,667.57, \$250,000, \$1,000,000, \$400,000, and
15 \$175,000 between October 21 and 29, 2004, none of which it disclosed in 24-Hour Notices.

16 Based on the information available at the reason to believe stage, it appeared that the RNC failed
17 to file 24-Hour Notices for these independent expenditures.

18 During the investigation, counsel explained that the payments of \$90,667.57, \$250,000,
19 \$1,000,000, and \$175,000 reported on Schedule E were for communications aired after October
20 31, 2004, and thus were not required to be disclosed in 24-Hour Notices.⁶ In addition, as
21 discussed *supra* p. 3, the \$400,000 independent expenditure reported on Schedule E partially
22 corresponds to the \$300,000 payment to Crossroads Media disclosed by the RNC in a 24-Hour

⁴ Counsel explained that the \$100,000 discrepancy between its 24-Hour Notice and Schedule E reporting was attributable to communications disseminated after October 31, 2004. *See* Letter from Jill Holtzman Vogel to Julie McConnell (May 3, 2007); *see also* Invoice RNC IE 102904013 (Oct. 29, 2004); RNC Check No. 150577, \$400,000 Wire Transfer to Crossroads Media LLC (Oct. 29, 2004).

⁵ *See* 2004 Post-General Report at 37,719 (Jun. 17, 2005) (FEC Image 25970347719); *see also* RNC Cash Receipts, Postage Refund from Arena Communications LLC (Oct. 27, 2004).

⁶ *See* Letter from Jill Holtzman Vogel to Julie McConnell (Mar. 22, 2007).

1 Notice dated October 31, 2004, with the remaining \$100,000 attributable to communications that
2 were disseminated after the 24-Hour Notice period.⁷

3 Counsel acknowledges that the RNC does not possess “perfect records” to support its
4 claim that these payments to Crossroads Media were for communications aired after the 24-Hour
5 Notice period.⁸ She described, however, the internal compliance protocol used to ensure that the
6 RNC timely reported independent expenditures, explained the timing and purpose of the
7 Crossroads Media expenditures that the RNC did not disclose in 24-Hour Notices, and consulted
8 with the RNC’s independent expenditure vendor, Curt Anderson, to reconstruct its 2004
9 reporting.⁹ Anderson averred the following:

- 10 • He had detailed discussions with counsel regarding the independent expenditure rules and
11 approval protocol set up by counsel and was aware of the RNC’s obligation to file
12 electronic reports for communications aired between October 14 and 31, 2004;
- 13 • He provided notice to counsel of every communication and submitted all invoices for
14 approval prior to payment; and
- 15 • Some independent expenditures between October 14 and 31, 2004, were not associated
16 with any communication aired between those dates, but rather were for focus group
17 expenses not attributable to any specific communication, expenditures for monthly
18 retainers, and advertisements that the RNC never disseminated or disseminated after
19 October 31, 2004.¹⁰

20 Despite the lack of supporting documents, the information provided by counsel and in
21 Anderson’s affidavit suggests that the RNC properly reported the payments to Crossroads Media.
22 This conclusion is consistent with the RNC’s pattern of paying for its 2004 independent

⁷ See *supra* note 4 and accompanying text.

⁸ See Letters from Jill Holtzman Vogel to Julie McConnell (Mar. 22 and May 3, 2007).

⁹ See *id.*

¹⁰ See Affidavit of Curt Anderson at ¶¶ 8-10.

1 expenditures upon receipt of an invoice from a media vendor and later disseminating
2 the communication.¹¹

3 Commission regulations, however, required the RNC to maintain records “provid[ing] in
4 sufficient detail the necessary information and data from which the filed reports and statements
5 may be verified, explained, clarified, and checked for accuracy and completeness... for a period
6 of not less than 3 years after the report or statement is filed....” 11 C.F.R. § 104.14(b)(1)-(3). In
7 the instant matter, relevant supporting documents could include notarized statements from
8 television or radio stations confirming that the advertisements aired, refunds from the stations if
9 the advertisements did not air, station instructions from the RNC specifying when the
10 advertisements should run, or other internal documents memorializing dissemination dates. The
11 RNC did not maintain any such records, and counsel explained that obtaining evidence of
12 specific dates on which advertisements aired would require the RNC to contact the television and
13 radio stations in each media market in which it aired advertisements. Accordingly, the
14 Commission admonishes the RNC for failing to maintain records verifying the dissemination
15 dates of these independent expenditures to Crossroads Media in violation of 11 C.F.R.
16 § 104.14(b).

17 **B. FAILURE TO FILE 24-HOUR NOTICES FOR INDEPENDENT**
18 **EXPENDITURES TO DIRT ROAD PRODUCTIONS**

19 The Commission found reason to believe that the RNC failed to file five 24-Hour
20 Notices relating to eight independent expenditures totaling \$173,030.34, which consisted of
21 payments to a media vendor, Dirt Road Productions, between October 15 and November 8, 2004.
22 Of this amount, \$146,728.19 was for retainer fees, costs associated with focus groups, and

¹¹ See *supra* note 2.

1 payments related to advertisements that aired after October 31, 2004, which the RNC was not
2 required to disclose in 24-Hour Notices.¹² The remaining \$26,302.15, however, was for
3 payments to ship media content to television and radio stations on October 25 and 28, 2004.

4 A political committee that makes an independent expenditure "aggregating \$1,000 or
5 more after the 20th day, but more than 24 hours, before the date of an election shall file a report
6 describing the expenditures within 24 hours." 2 U.S.C. § 434(g)(1)(A); *see also* 11 C.F.R.
7 § 104.4(c). Both the production and distribution costs associated with an independent
8 expenditure made by a political committee are reportable as independent expenditures. *See*
9 Explanation & Justification, Bipartisan Campaign Reform Act of 2002, Reporting, 68 Fed. Reg.
10 404, 407 (Jan. 3, 2003).

11 The RNC was required to file 24-Hour Notices for independent expenditures totaling
12 \$26,302.15 to ship media content to television and radio stations on October 25 and 28, 2004.
13 Such charges are part of the distribution costs associated with specific independent expenditures
14 and, as such, must be disclosed in 24-Hour Notices. Indeed, the RNC could not have
15 disseminated its advertisements without first shipping the media content to television and radio
16 stations and incurring the shipping charges. As a result, the RNC violated 2 U.S.C.
17 § 434(g)(1)(A) and 11 C.F.R. § 104.4(c) by failing to file two 24-Hour Notices to support these
18 independent expenditures.

19 This matter, however, does not justify the use of additional enforcement resources
20 given the relatively small amount in violation, particularly compared to the original amount of
21 activity included in the Commission's reason to believe findings, the nature of the violation, and
22 the *de minimus* civil penalty that would be appropriate under these circumstances.

¹² See Letters from Jill Holtzman Vogel to Julie McConnell (Mar. 22 and May 3, 2007).

MUR 5850 (RNC)
Factual and Legal Analysis

- 1 Accordingly, the Commission takes no further action other than to admonish the RNC for failing
- 2 to file two 24-Hour Notices to support \$26,302.15 in independent expenditures for shipping of
- 3 media content to television and radio stations.